

### **REMARKS**

Claims 21, 24, 26, 30, and 36-39 are pending in the application. Claim 21 has been amended. No new matter has been added.

### **ELECTION / RESTRICTION**

Applicant notes with appreciation the Examiner's acknowledgement of the election of Group XVI and the grouping of previously amended claim 26 and claims 36-39 with the elected claim set. Applicant respectfully maintains the right to pursue the non-elected subject matter in one or more continuing or divisional applications.

### **MINOR AMENDMENT**

Claim 21 has been amended for the sake of clarity. A semicolon has been added, an indentation was made, and a typographical error has been corrected. Additionally, the phrase, "and a pharmaceutically excipient", has been deleted. Applicant respectfully asserts that these amendments neither narrow the claim nor introduce new matter.

### **CLAIM REJECTION – 35 U.S.C. § 103**

Claims 21, 24, 26, 30, and 36-39 have been rejected under 35 U.S.C. § 103 as being allegedly obvious over U.S. Pub. No. 2004/0087626 in view of U.S. Pub. No. 2003/0147923. This is the only ground for rejection. Applicant respectfully requests that the obviousness rejections based upon U.S. Pub. No. 2004/0087626 be withdrawn pursuant to 35 U.S.C. §103(c).

Section 103(c) states:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

This section applies to applications filed on or after November 29, 1999. Accordingly, section 103(c) requires (1) that the present application was filed after November 29, 1999; (2) that the subject matter of the present invention and the cited patent application have different inventive entities; (3) that the cited patent application be available as prior art under section 102(e), (f) or (g); and (4) that the present invention and the cited patent application were owned by the same person, or subject to an obligation of assignment to the same person, at the time the present invention was made.

Applicant respectfully submits that U.S. Pub. No. 2004/0087626 satisfies the requirements of 35 U.S.C. §103(c). First, the present invention was filed on or after November 29, 1999.

Second, the subject matter of the present invention was developed by a different inventive entity from that of U.S. Pub. No. 2004/0087626.

Third, U.S. Pub. No. 2004/0087626 is available only as 102(e)-type prior art. The present application was filed on March 29, 2004 and properly claims priority to U.S. Provisional Appl. No., 60/458,888, filed on March 28, 2003. The cited reference, U.S. Pub. No. 2004/0087626, was published on May 6, 2004, after both filing dates. Hence, U.S. Publ. No. 2004/0087626 is not available as prior art under § 102(a) or (b).

Further, Applicant notes that the corresponding PCT publication is also unavailable as prior art under § 102(a) or (b). The PCT publication, WO03/082272, was submitted by Applicant in an IDS received by the Office on September 12, 2005 and was indicated as

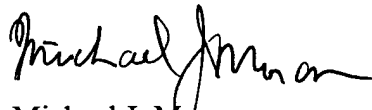
considered by the Office on October 20, 2005. Nevertheless, Applicant notes that the PCT application was published on October 9, 2003, after the filing date of the provisional application for the present invention. Hence, the corresponding PCT publication is also not available as prior art under § 102(a) or (b).

Fourth, the subject matter of U.S. Pub. No. 2004/0087626 and that of the present application, U.S. Appl. No. 10/814,480 were under an obligation of assignment to the same person at the time that the present invention was made. To prove common ownership or an obligation to assign to the same person, MPEP § 706.02(l)(2) requires only a clear and conspicuous statement, by the applicant or attorney of record, that there was common ownership, or an obligation to assign to the same person, at the time the latter invention was made. No further evidence is required. MPEP § 706.02(l)(2). Accordingly, Applicant has attached a Statement of Common Ownership or Obligation of Assignment by the attorney of record that the subject matter of U.S. Pub. No. 2004/0087626 (U.S. Appl. No. 10/405,945) and that of the present application, U.S. Appl. No. 10/814,480, were subject to an obligation to assign to Chiron Corporation at the time that the present invention was made.

Accordingly, Applicant respectfully requests that the rejections based upon U.S. Pub. No. 2004/0087626 be withdrawn. *Absent rejections based on U.S. Pub. No. 2004/0087626, no rejections remain.* Therefore, early allowance of all pending claims is respectfully requested. The examiner is requested to contact the undersigned attorney if an interview, telephonic or personal, would facilitate allowance of the claims.

The Commissioner is hereby authorized to charge any fee or underpayment thereof or credit any overpayment to deposit account no. 50-1275.

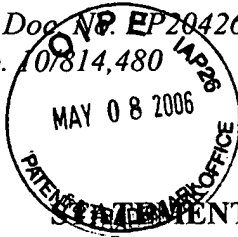
Respectfully submitted,  
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Date: May 5, 2006

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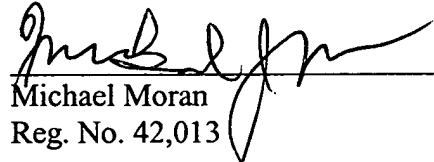


**STATEMENT OF COMMON OWNERSHIP OR ASSIGNMENT**

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U.S. Application No. 10/814,480 and U.S. Application No. 10/405,945 (U.S. Publication No. 2004/0087626) were, at the time the invention of U.S. Application No. 10/814,480 was made, subject to an obligation of assignment to Chiron Corporation.

Executed this 5 day of May, 2006, at Emeryville, California.

  
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Michael Moran  
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